

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAFAEL CHAVEZ-ALVAREZ,
Plaintiff,

v.

OFFICER MONZON, BADGE #4147,
Defendant.

Case No. 16-02796 EJD (PR)

ORDER OF DISMISSAL

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. On August 25, 2017, the Court issued a summons upon Defendant. (Docket No. 14.) On November 3, 2017, Defendant filed a Suggestion of Death noting that Plaintiff had died on March 21, 2017. (Docket No. 18.) Defendant identified Plaintiff's next-of-kin, his mother Elizabeth Ventura. (Id.) However, Defendant's counsel was unable to locate a telephone number or address at which to contact her. (Id. at 1-2, 8.)

"If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be

1 dismissed.” Fed. R. Civ. P. 25(a). Two things are required of a party for the running of
2 the 90 day period to commence: a party must 1) formally suggest the death of the party on
3 the record, and 2) serve the suggestion of death on the other parties and nonparty
4 successors or representatives. Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994).

5 Here, Defendant formally filed a suggestion of death on November, 3, 2017.
6 Defendant also identified Plaintiff’s next of kin, and attempted to locate and serve
7 Plaintiff’s successor or representative with due diligence. The Court finds that the actions
8 by Defendant are sufficient to initiate the running of the 90 day period in which a motion
9 for substitution must be filed. More than 90 days have passed, and the Court has received
10 no communication from Plaintiff’s successor or representative. Accordingly, Plaintiff’s
11 civil rights action is **DISMISSED** without prejudice pursuant to Rule 25 of the Northern
12 District Local Rules.

13 The Clerk shall terminate all pending motions and close the file.

14 **IT IS SO ORDERED.**

15 Dated: 3/30/2018



EDWARD J. DAVILA
United States District Judge